

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No.2115 of 2015

Reserved on : December 17, 2018

Date of decision: January 9, 2019

Pankaj Kumar

...Petitioner

Versus

Union of India and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. K.S. Banyana, Advocate
for the petitioner.

Mr. Satya Pal Jain, Additional Solicitor General of India
with Mr. Dheeraj Jain, Sr. Counsel Govt. of India
for respondents No.1 to 5.

None for respondent No.6.

HARINDER SINGH SIDHU, J.

This Writ Petition has been filed impugning the order dated 31.07.2014 of the Central Administrative Tribunal, Chandigarh Bench in O.A. No.618/HR/2013, whereby, the Original Application filed by the petitioner was dismissed. Through the Original Application the petitioner had challenged the action of the respondents in not recommending his name for appointment as Central Excise Inspector.

The Staff Selection Commission (Respondent No.2) issued a Public Notice dated 19.03.2011 for conducting Combined Graduate Level Examination for recruitment to various posts under the Government of

India. The examination was to consist of two Tiers - a written type objective examination followed by Computer Proficiency Test/Interview/Skill Test where ever applicable. The petitioner/applicant who belongs to the Scheduled Caste category submitted his application form for the said examination. In the written examination, he secured 322.75 marks. He was called for interview on 24.10.2011 wherein he secured 41 marks. The total marks secured by him were 363.75. The applicant was not recommended for appointment though five candidates having lesser marks than him namely, Sumit Kumar, Gagandeep Raj, Pardeep Tanwar, Deen Dayal Bairwa and Bheekh Chand were recommended for appointment as Central Excise Inspectors in the States of Tamil Nadu, Andhra Pradesh, Karnataka and Kerala. On his representation, he was informed that he had not been recommended for appointment as he had submitted his option for States of Punjab, Haryana, Chandigarh, Delhi, Gujarat, Rajasthan, Himachal Pradesh and Madhya Pradesh whereas the candidates named by him had opted for the States of Tamil Nadu, Andhra Pradesh, Karnataka and Kerala. He was also informed that no candidate lower in merit than the petitioner had been appointed in the States where the petitioner had given his option. Aggrieved, he filed the Original Application.

The case of the respondents was that the petitioner had opted only for the States of Punjab, Haryana, Chandigarh, Delhi, Gujarat, Rajasthan, Himachal Pradesh and Madhya Pradesh where he did not qualify. He could not be considered for appointment in the States where he did not opt. Reference was made to Clauses 12 and 15 of the

advertisement/Notice Inviting applications dated 19.03.2011.

Clause 12 reads as under:

“Once candidate has been given his/her first available preference, he/she will not be considered for the other options. The candidates are therefore, advised to exercise preference in Application Form carefully and detailed options after Tier-I examination. The option/preference once exercised by the candidates will be treated as FINAL and IRREVERSIBLE. Subsequent request for change of allocation/service by candidates will not be entertained under any circumstances/ reasons.”

Clause 15 of the advertisement was as under:-

“15. PREFERENCE :

Different posts have been placed in different Groups in para 2 above. The candidate is required to indicate his Group-wise preference very carefully. He/She would not be considered for any post in a particular Group, if he/she has not indicated his preference for that Group. A further detailed options for various posts within the Group for which he/she has exercised preference in the application would be obtained at the time of Tier-II/ Interview/ Skill Test.”

Learned Tribunal dismissed the application holding that even though in the original advertisement there was no mention about seeking State preferences, however, as the petitioner had willingly submitted the State preferences without any protest, he was estopped from contesting the requirement of seeking State preferences on the ground that the advertisement did not provide for the same but it was asked at a later stage. The Tribunal also held that the examination had been conducted in 2011 pursuant where to appointments were made. Any decision to quash the advertisement more than two years after such appointment would cause

administrative upheaval affecting hundreds of candidates. The application was dismissed both on merits and on considerations of expediency as referred above.

Ld. Counsel for the petitioners has assailed the finding of the Tribunal, whereas the respondents have supported it.

It has come on record and has been so stated in the written Statement dated 14.09.2015 filed by the respondents that apart from what was mentioned in the initial advertisement, all the candidates were given another opportunity and total freedom in choosing the posts and exercising the option with regard to place of posting. The Commission vide communication dated 3.10.2011 decided to invite detailed option from candidates declared eligible for consideration for interview/skill tests for different posts on the basis of performance in Tier-I and Tier-II in the appended format. It was also decided to provide the facility of online option to reduce data entry errors. A write up containing the 'Detailed option for the posts Combined Graduate Level Examination 2011' was placed on the Commission's website on 3.10.2011. The relevant paras of this write up are extracted below:

*“No.3/1/2011-P&P (Part)
Staff Selection Commission*

Detailed option for the posts.

Combined Graduate Level Examination, 2011

Candidates are requested to refer to Para 10 of the write-up of the declaration of the result of written part of the Examination published on the Commission's website on 29.9.2011.

2. *It has been decided by the Commission that options exercised by the candidates in the application form, broadly for Interview Posts and Non-Interview Posts, need not be taken into account and that fresh detailed option for all posts included in the Examination be taken to provide an opportunity to the candidates total freedom in choosing the posts in exercising option irrespective whether the posts are interview or non-interview posts. Candidates may note that they will be first allotted posts on merit-cum-option basis. Thereafter, they will be considered for posting in States/UTs as per option exercised by them.”*

xxx xxx xxx

4. *Commission proposes to allot the candidates selected for different posts of States/UTs or formations of officers roughly corresponding them on merit-cum-option basis. Therefore, candidates are advised to exercise option for States/UTs carefully.*

5. *Candidates may note that detailed options once exercised are final and cannot be changed thereafter.*

xxx xxx xxx”

The Annexure to this write up mentioned all the different posts (25 in number) for which options could be given. Candidates were advised that they would not be considered for the post for which option had not been exercised. They could fill in as many options as possible.

All the States were mentioned for the purpose of giving 'Preference of posting.'

Candidates were advised that State-wise options in order of preference for States/UTs were being sought to consider them for allotment in the event of their selection for posts/postings taking into consideration their position in the merit order subject to availability of vacancies /policies

of the Commission in this regard. Candidates were advised to exercise preference for all States/UTs. They would not be considered for States/UTs for which options were not exercised by them.

Based on this, Ld. Counsel for the respondents argued that as the petitioner opted for posting only in some of the States namely Punjab, Haryana, Chandigarh, Delhi, Gujarat, Rajasthan, Himachal Pradesh and Madhya Pradesh where he did not find a place in the merit, hence he could not claim appointment in States for which he did not opt.

During the hearing of this case, various orders were passed with a view to ascertain the position of vacancies and as to whether the petitioner could be adjusted as admittedly he had scored more marks than some of those who were offered appointment as Central Excise Inspectors, though in the States not opted for by the petitioner.

Vide order dated 29.02.2016, the respondents were directed to file an affidavit disclosing the circumstances under which the petitioner was not adjusted in any of the options of posting exercised by him. The said affidavit was filed. On 18.09.2018, being not satisfied with the response of the respondent, this Court passed the following order:-

“There appears to be concerted effort on behalf of Staff Selection Commission to mislead this Court and conceal the material facts. For example, it is claimed that candidates were given “Order of Preference” at page 74 which includes 'State of Gujarat' also. However, the record produced today reveals that there was no vacancy available in Gujarat. It was possible that a candidate higher in merit would have opted for Gujarat State without knowing that no Post was available for his appointment. Before we take any harsh action, Secretary,

Staff Selection Commission is directed to remain present and assist the Court on the next date of hearing along with complete record.

List on 22.11.2018.”

On 22.11.2018, the following order was passed:-

“Sequel to the order dated September 18, 2018, Mr.D.B.Singh, Secretary, Staff Selection Commission is present in Court. He has fairly admitted that no vacancy belonging to SC category was available in Gujrat. However, he seeks time to look into the matter and come back to the Court after two weeks with the solution in order to accommodate the petitioner for the post of Central Excise Inspector.

Adjourned to 07.12.2018.

The Secretary shall remain present in the Court on the next date of hearing.”

On 10.12.2018, on the oral request of the Ld. Counsel for the petitioner, Central Board of Excise and Customs, New Delhi was arrayed as respondent No.6. Sh. Satya Pal Jain, Additional Solicitor General of India, undertook to inform the newly added respondent No. 6 of the next date.

Thereafter, the case was listed on 17.12.2018. Though respondent No.6 was duly intimated, however, no one appeared on its behalf.

There was, thus, no positive response on behalf of the respondents to adjusting the petitioner.

In the additional affidavit dated 04.12.2018 of Sh. D.B. Singh, Secretary Staff Selection Commission, the factual position was explained as under:-

“6. That, as regards issue related to non-availability of

vacancies in some of the States opted by the petitioner, it is submitted that the vacancies for various posts and States were not fixed at the time of Notification. The Commission had not notified number of vacancies in advance. As per para 1 of the Notice of Examination, “...Final recruitment through the Combined Graduate Level Examination to specific category of posts would be subject to receipt of intimation of confirmed number of vacancies from the concerned Indenting Departments/Offices/Cadres, before the Tier II Examination and/or before declaration of results.”

The Commission kept receiving the vacancies and accumulating these vacancies till the time of processing of the Final Result. Detailed options of Post and States from the candidates were obtained in the Month of October, 2011 and candidates had full liberty in opting for all States/UTs without any restriction but the Petitioner opted for only 06 States on his own. Vacancies for different Posts and States were finalized on 13.03.2012, just before declaration of the Final Result with a view to ensure maximum selections for filling up all the vacancies received till finalization of result for optimization of the selection process. Further, in Para 12- MODE OF SELECTION, it has clearly been mentioned, “...The Commission will recommend the candidates in the Merit List on the basis of the aggregate marks obtained by the candidates in the Written Examination and Interview (wherever applicable) and preference exercised by the candidates in the Application Form and detailed option exercised at the time of Tier II/ Interview /Skill Test/ Computer Proficiency Test depending on the number of vacancies available. Once the candidate has been given his /her first available preference, he /she will not be considered for the other options. The candidates are therefore advised to exercise preference in Application Form carefully and

detailed options after Tier I examination. The option/preference once exercised by the Candidates will be treated as FINAL and IRREVERSIBLE. Subsequent request for change of allocation/service by candidates will not be entertained under any circumstances/reasons". Further, as per point 1 of IMPORTANT INSTRUCTIONS TO CANDIDATES in Notice of Examination, "...Preference of Posts, Group-wise is to be indicated in the application. Further detailed option for posts within the Groups will be taken after declaration of result of Tier II or at the time of Interview/Skill test. Candidates are requested to note that preference for Groups/Posts once exercised will be final. Request for change of preference will not be considered under any circumstances". These rules and procedure were applied to all the candidates uniformly without any discrimination. Detailed options for posts and States were taken from the candidates at the time of interview/Document Verification/Skill Test stage in the month of October, 2011. All the candidates were having full liberty to exercise option for posts and States as per their own willingness and no candidate had information about actual number of vacancies in various posts/categories/States. The Petitioner was not an exception. All the candidates were considered for all the posts and States opted by them, one after the other in order of preferences, and were selected subject to availability of vacancies in those posts/States/categories strictly in conformity with the provisions contained in Notice of Examination."

What emerges from the above is that the vacancies for various posts and States were not fixed at the time of the advertisement. The Commission had not notified number of vacancies in advance. The Commission kept receiving the vacancies and accumulating these vacancies

till the time of processing of the Final Result. Detailed options of Post and States from the candidates were obtained in the month of October, 2011 at the time of interview/Document Verification/Skill Test stage, whereas, the vacancies for different Posts and States were finalized on 13.03.2012, just before declaration of the Final Result.

Thus, at the time of exercising the option by the candidates they were not aware of the vacancies for the different posts in the different States. In such a situation, the exercise of option by them, both with regard to the posts and the States for preference of posting cannot be considered to be a well informed action but would be a case of a 'fling in the dark'. If the petitioner had known that there were no vacancies in the States opted for by him, there was no reason for him to not have opted for the remaining States as well.

The petitioner belongs to the most disadvantaged section of Society. It needs no mention that in the present times any job, more so a secure Government job, is extremely hard to come by. Families wait for years in the hope and expectation for jobs to be advertised. The competition is tough. The ratio of applicants to the vacancies available is extremely high. The competition becomes keener with each passing day, with new and better qualified entrants to the job market. An opportunity once missed may not come again.

In the facts and circumstances of this case, it would be extremely unjust and unfair if the petitioner is denied appointment solely because he did not opt for the remaining States as well, when candidates lower than him have been appointed.

Accordingly, this petition is allowed. The order of the Central Administrative Tribunal is set aside. The respondents are directed to offer appointment to the petitioner on the post of Central Excise Inspector by creating a supernumerary post. His appointment would relate back to the date when the candidates lower than him on merit were appointed, with all consequential benefits including seniority, except arrears of salary.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

January 9 , 2019
gian

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No